IN THE U. S. COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 06-16624-DD July 23, 2007

GEORGE V. SMITH,
Plaintiff-Appellant,
vs,

ORANGE COUNTY SCHOOL BOARD,
Defendant-Appellee.

On Appeal from the United States District Court for the Middle District of Florida

BEFORE: DUBINA, CARNES, and FAY, Ct. Judges

PER CURIAM:

The petition for rehearing filed by the Appellant is DENIED.

ENTERED FOR THE COURT:

s/ Fay,
UNITED STATES CIRCUIT JUDGE

IN THE U. S. COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 06-16624-DD June 4, 2007
Non-Argument Calendar

D. C. Dcoket No: 04- 1811- CV-ORL-28-DAB

GEORGE V. SMITH,
Plaintiff-Appellant,

vs,

ORANGE COUNTY SCHOOL BOARD,
Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida

(June 4, 2007)

BEFORE: DUBINA, CARNES, and FAY, Ct. Judges

PER CURIAM:

George V. Smith appeals the district court's grant of the School Board of Orange County's ("School Board") motion for summary judgment in Smith's pro se employment discrimination action. On appeal, Smith challenges several non-dispositive orders entered by the magistrate judge, the district court's denial of his motion to amend his complaint, and the court's grant of the School Board's summary judgment motion. For the reasons discussed more fully below, we affirm.

I. Background

In December 2004, Smith filed this pro se complaint against his former employer, the School Board of Orange County ("School Board"), alleging (1) race and age discrimination, in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. §§ 2000e-2, and the Age Discrimination in Employment Act of 1967 ("ADEA"), 29 U.S.C. § 623(a); (2) retaliation, in violation of Title VII and 42 U.S.C. §§ 1981 and 1983; and (3) deprivation of procedural due process rights, in violation of the Fourteenth Amendment to the United States Constitution. The district court entered a case management and scheduling order, explicitly

indicating that "all parties (both represented and pro se) shall comply with this order [and] with the Federal Rules of Civil Procedure ...." The scheduling order also provided that the date by which all motions to amend pleadings had to be filed was September 16, 2005. Additionally, the scheduling order indicated the following with regard to motions for summary judgment:

> Each party opposing a motion for summary judgment shall serve, within thirty days after being served with such motion, a legal memorandum with citation of authorities in opposition to the relief requested as required by Local Rule 3.01(b). The memorandum in opposition shall specify the material facts as to which the opposing party contends there exists a genuine issue for trial, and shall be accompanied by affidavit(s) and other evidence in the form required by Fed. R. Civ. P. 56.... The Court takes a motion for summary judgment under advisement thirty days from the date it is served, unless the Court orders a different date. Unless specifically ordered, the Court will not hold a hearing on the motion. Failure to oppose any motion for summary judgment may result in the entry of a judgment for the movant without further proceedings.... All requirements in this [scheduling order] apply to pro se litigants as well as to parties represented by counsel.

Thereafter, Smith filed numerous motions relating to pre-trial discovery and Smith's representation by counsel. First, Smith filed a motion to compel witness to appear and be deposed, and a "motion to deem admitted" the admissions he served on the School Board. The magistrate denied both of those motions on November 23, 2005. Smith did not object to the magistrate's November 23 order. Next, Smith filed a large series of motions, including: (1) a "motion for order on compliance" requiring the School Board to comply with his request for admissions; (2) a "motion to determine sufficiency" requesting that the court find that the School Board's response to his complaint was insufficient; (3) another "motion to determine sufficiency"; (4) another "motion for order on compliance"; (5) two "rebuttals" to the School Board's response to his "motion to determine sufficiency"; and (6) an "amended motion to determine sufficiency." On May 12, 2006, the magistrate denied the motions and ordered the rebuttals stricken because they failed to comply with the local rules of the Middle District of Florida. On May 26, 2006, Smith filed objections to

the magistrate's May 12 order.

Smith later filed additional motions, including: (1) a motion for leave to file an amended complaint; (2) a "motion for intermittent appearance," requesting that the court permit him to retain counsel for certain specified actions; and (3) a motion for reconsideration of the magistrate's November 23, 2005 order, which motion he filed on June 9, 2006. The magistrate judge denied all of those motions on June 19, 2006, noting that counsel could not represent Smith in an "intermittent" fashion. Smith did not object to the magistrate's June 19 order.

Lastly, of relevance to the instant appeal, Smith filed the following motions: (1) a motion to compel responses to his interrogatories; (2) a "motion to determine sufficiency" of the School Board's response; (3) a "motion to compel [and] request for production"; (4) a "motion to limit time," requesting that the court not rule on any motion before three days from the date on which the motion was filed; (5) a "motion to compel" a witness to appear for a deposition; and (6) a "motion to compel" a response to his interrogatory. On

September 15, 2006, the magistrate denied all of the above-listed motions. Smith did not object to the magistrate's September 15 order, however, he filed a motion for reconsideration of that order on October 23, 2006.

Also on September 15, 2006, the School Board filed a motion for summary judgment. Smith did not file a response to the summary judgment motion. On October 19, 2006, however, Smith filed a motion for leave to file a second amended complaint, arguing that, through discovery, he had learned of new violations of the law committed by the School Board.

On November 21, 2006, the district court granted the School Board's motion for summary judgment and denied all pending motions as moot. The district court amended its order on November 29, 2006, though the record does not indicate a reason for the amended order and review of both orders reveals no substantive alterations. In its grant of the summary judgment motion, the court noted that Smith had not filed a response to the motion, but that the case management and scheduling order provided him with adequate

notice of his obligations regarding a summary judgment motion and that he had "sporadic legal assistance in this case." Smith filed a notice of appeal as to the district court's November 21 order granting the School Board's motion for summary judgment and the court's November 29 amended order.

II. Analysis

A. Magistrate Judge's Orders

In his appellate brief Smith requests reversal of four of the magistrate's orders, which were entered on the following dates: (1) November 23, 2005; (2) May 12, 2006; (3) June 19, 2006; and (4) September 15, 2006. In that regard, Smith argues that the magistrate erred in denying his various motions to compel depositions, require the School Board to respond to his request for admissions and interrogatories, and allow him to secure "intermittent" counsel.

We review a district court's discovery rulings for abuse of discretion. Maynard v. Bd. of Regents, 342 F.3d 1281, 1286 (11th Cir. 2003). We also review a district court's decision not to appoint counsel for abuse of discretion. United States v.

Berger. 375 F.3d 1223, 1226 (11th Cir. 2004). The orders at issue here were all entered by the magistrate judge. According to Federal Rule of Civil Procedure 72:

> A magistrate judge to whom a pretrial matter not dispositive of a claim or defense of a party is referred to hear and determine shall promptly conduct such proceedings as are required and when appropriate enter into the record a written order setting forth the disposition of the matter. Within 10 days after being served with a copy of the magistrate judge's order, a party may serve and file objections to the order; a party may not thereafter assign as error a defect in the magistrate judge's order to which objection was not timely made.

Fed.R.Civ.P. 72(a). We have concluded that, where a party fails to timely challenge a magistrate's non-dispositive order before the district court, the party waived his right to appeal those orders in this Court. Maynard. 342 F.3d at 1286; see also Farrow v. West. 320 F.3d 1235, 1249 n.21 (11th Cir. 2003) (holding that a pro se litigant waived his right to appellate review of a magistrate's non-dispositive order by not objecting to the order before the district court, as required by Fed.R.Civ.P. 72(a)). In the instant case, it is

undisputed that each order that Smith appeals is a non-dispositive order, as none of the orders disposed of a claim or defense of any party. The School Board argues that Smith did not object to the magistrate's orders before the district court, and, thus, pursuant to Rule 72(a), he waived his right to raise those issues on appeal. Each order to which Smith asserts error is discussed in turn.

First, Smith claims that the magistrate erred in its November 23, 2005 order denying his motions to compel depositions and deem his admissions admitted. Smith did not object to that order before the district court, but rather, he filed a motion for reconsideration of the order on June 9, 2006. Because Smith did not file objections to the magistrate's November 23, 2005 order, he has waived that issue for purposes of this appeal. See Fed.R.Civ.P. 72(a); see also Maynard, 342 F.3d at 1286. Further, even to the extent that his motion for reconsideration could be construed as objections to the order, that motion was filed beyond the 10-day limitation period for filing such objections, as specified in Rule 72(a).

Second, Smith maintains that the

magistrate's May 12, 2006 order was similarly erroneous. Even though the School Board's argument on appeal contends otherwise, the record reflects that, on May 26, Smith did file objections to the May 12 order. As an initial matter, it is unclear whether Smith filed his objections within the time limit specified in Rule 72(a), namely, that objections must be filed within 10 days of being served with the magistrate's order. See Fed.R.Civ.P. 72(a). It is apparent that the objections were filed more than 10 days from the date that the magistrate issued the order, May 12, 2006, but it is not clear on what day Smith was served with that order. However, the district court's docket sheet indicates that copies of the May 12 order were mailed to Smith on May 15, 2006, and, thus, it is reasonable to assume that the earliest date on which Smith could have received the copy of the order was May 16, 2006, which would have made his objections filed on May 26 timely. See Fed.R.Civ.P. 72(a). Regardless, construing Smith's pro se brief liberally, and considering that the School Board does not contend that Smith filed the objections more than 10 days after he was served

with the magistrate's order, we conclude that Smith's objections to the Magistrate's May 12 order were timely filed, pursuant to Rule 72(a). Nevertheless, review of the record reveals that the district court never ruled on the merits of Smith's objections, but the court did indicate in its order granting the School Board's motion for summary judgment that it denied all pending motions as moot. In light of our decision to affirm the district court's grant of the School Board's motion for summary judgment, discussed more fully below, and Smith's lack of argument in his appellate brief that his objections to the magistrate's order, which denied Smith's various discovery motions, were not moot, we affirm the district court's finding that the pending objections were moot.

Third, Smith argues that the magistrate's June 19, 2006 order was also erroneous. Smith did not file objections to this order, and, accordingly, he waived his right to appeal that issue. See Fed.R.Civ.P. 72(a); see also Maynard. 342 F.3d at 1286. Lastly, Smith contends that the magistrate's September 15, 2006 order was erroneous. Again, Smith did not object to the magistrate's order,

though, on October 23, 2006, he did file a motion to reconsider that order. Nonetheless, to the extent that Smith's motion for reconsideration can be construed as an objection to the magistrate's September 15 order, it did not meet the 10-day time limit of Rule 72(a) because Smith filed it more than 30 days after the magistrate entered the order and, presumably, long after Smith was served with the order. See Fed.R.Civ.P. 72(a); see also Maynard. 342 F.3d at 1286.

B. Motion to Amend Complaint

In addition to appealing the four orders of the magistrate, Smith also appeals the district court's denial of his motion to amend his complaint, which he filed approximately one month after the School Board filed its motion for summary judgment. Smith asserts that he sought to amend his complaint in order to include facts and claims of which he had become aware only after the School Board withheld those facts from him during discovery.

We have explained that we "will only reverse a district court's denial of a motion to amend in instances in which the district court has clearly

abused its discretion." Henson v. Columbus Bank & Trust Co. 770 F.2d 1566, 1575 (11th Cir. 1985). Pursuant to Fed.R.Civ.P. 15(a), a party seeking to amend its complaint after it previously has amended the complaint, or after a responsive pleading has been filed, may amend the complaint "only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires." Fed.R.Civ.P, 15(a). However, where a party's motion to amend is filed after the deadline for such motions, as delineated in the court's scheduling order, the party must show good cause why leave to amend the complaint should be granted. See Fed.R.Civ.P. 16(b); Sosa v. Airprint Systems. Inc.. 133 F.3d 1417, 1419 (11th Cir. 1998).

Here, it is undisputed that Smith previously had amended his original complaint and that the School Board had filed a responsive pleading to Smith's amended complaint. Further, the district court had entered a scheduling order that set forth the deadline for amending pleadings: September 16, 2005. Therefore, despite Smith's argument on appeal that the district court should have granted his motion to amend his complaint in accordance

with the liberal amendment instructions of Rule 15(a), Smith still had to comply with Rule 16(b)'s good cause requirement because he filed his motion to amend on October 19, 2006, more than one year after the court's deadline for such motions. See Sosa. 133 F.3d at 1419 (explaining that, where a party files a motion to amend within the time prescribed in the court's scheduling order, this Court focuses on Rule 15(a) on appeal; but, where a party files an untimely motion to amend, this Court must first determine whether the party complied with Rule 16(b)'s good cause requirement).

Careful review of Smith's motion to amend his complaint reveals that Smith did not indicate with any specificity the good cause he had for untimely moving to amend his complaint. Smith alleged that discovery had "produced new violations of the [l]aw that must be addressed within the counts of the complaint," but he failed to further indicate what those new violations were, what facts supported them and why those facts previously were undiscoverable. Furthermore, the School Board's motion for summary judgment had been

pending for approximately one month prior to Smith's motion to amend his complaint. The district court never ruled expressly on Smith's motion, but it denied the motion as moot when it granted the School Board's motion for summary judgment and made a general denial of all pending motions as moot. Given the extreme untimeliness of Smith's motion and his lack of a complete showing of good cause, the district court did not abuse its discretion in denying Smith the opportunity to amend his complaint before the court ruled on the summary judgment motion and denied all pending motions as moot.

C. Motion for Summary Judgment

Smith argues on appeal that the district court erroneously granted the School Board's motion for summary judgment without first entering an order that specified a time by which he had to file his response to the summary judgment motion. Smith contends that he did not respond to the summary judgment motion because he was awaiting a notice from the court specifying a hearing date. He asserts that, according to Fed.R.Civ.P. 56, the court was required to notify

him at least 10 days prior to its ruling that (1) it intended to rule on the motion without first holding a hearing and (2) he had an opportunity to respond to the motion prior to the ruling.

We review a district court's grant of summary judgment de novo. Brooks v. County Comm'n of Jefferson County, Ala., 446 F.3d 1160, 1161 (11th Cir. 2006). Pursuant to Fed. R. Civ.P. 56(c), a motion for summary judgment "shall be served at least 10 days before the time fixed for the hearing." We have interpreted the notice requirement of Rule 56 as requiring "10-day advance notice to the adverse party that the motion and all materials in support of or in opposition to the motion will be taken under advisement by the trial court as of a certain day." Milburn v. United States, 734 F.2d 762, 765 (11th Cir. 1984) (emphasis in original). "It is well settled in this circuit that Rule 56(c) does not require an oral hearing." Id. However, Rule 56(c) notice "requires at least this: that an adverse party must be given express, ten-day notice of the summary judgment rules, of his right to file affidavits or other material in opposition to the motion, and of the

consequences of default." Griffith v. Wainwright. 772 F.2d 822, 825 (11th Cir. 1985). Thereafter, "the court may properly take the motion under advisement as of a day certain and may rule on the motion consistent with the dictates of procedural fairness required by Rule 56." Id. "We have held repeatedly that this requirement of notice will be deemed strictissimi juris and applies to all parties litigant." Id. (emphasis in original). Moreover, "a court should be particularly careful to ensure proper notice to a pro se litigant... so that any rights that such a litigant might have will not be extinguished merely through failure to appreciate the subtleties of modern motion practice." Id (quotation and citation omitted).

Here, the district court's case management and scheduling order met all the requirements of Griffith. Specifically, the scheduling order indicated that (1) a party opposing a motion for summary judgment had 30 days from the date of service to respond to the motion; (2) the response had to include a legal memorandum, affidavits, and other evidence establishing the existence of a genuine issue for trial; (3) the court would take the

motion under advisement 30 days from the date it was served; (4) unless otherwise ordered, the court would not hold a hearing on the motion; (5) failure to respond to the motion could have resulted in the entry of judgment for the movant; and (6) the requirements applied to both counseled and pro se parties. The record reveals that the district court complied with the dates established in the scheduling order because it did not grant the School Board's motion for summary judgment until more than 60 days after it was filed, thereby providing 30 days for Smith to respond and 30 days in which the motion was under advisement by the court. Therefore, the district court provided Smith proper notice, as required under Rule 56(c).[1]

In light of the foregoing, the district court's grant of the School Board's motion for summary judgment and its denial of Smith's pending motions as moot is

AFFIRMED.

[1]To the extent that Smith argues in his reply brief that the district court should have voided the scheduling order upon receipt of his objections to that order, his argument is without merit. Smith filed objections to the court's scheduling order after issuance of the order, arguing that his counsel had negotiated the scheduling order with the School Board, but his counsel improperly waived his right to discovery. Given that Smith's sole objection to the scheduling order had to do only with the discovery process, and not the process by which the court would dispose of motions for summary judgment, Smith cannot now complain that his objection to the scheduling order included objecting to the court's summary judgment procedure. See Access Now. Inc. v. Southwest Airlines Co. 385 F.3d 1324, 1331 (11th Cir. 2004) (holding that this Court will not consider issues not raised before the district court and raised for the first time on appeal).

U. S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

GEORGE V. SMITH,
Plaintiff,
vs, CASE NO: 6:04-CV-1811-ORL-28

ORANGE COUNTY SCHOOL BOARD,
Defendant.

JUDGMENT IN A CIVIL CASE

Decision by Court. This action came before the Court on a Motion for Summary Judgment. The issues have been tried or heard and a decision has been rendered,

IT IS ORDERED AND ADJUDGED

That judgment is entered in favor of Defendant, School Board of Orange County, and against the Plaintiff, George V. Smith.

Date: November 24, 2008

SHERYL L. LOESCH, CLERK

s/J. Thigpen, Deputy Clerk

U. S. DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA

The following transaction was entered on 11/24/2006 at 9:36 AM EST and filed on 11/24/2006.

Case Name:
Smith v. School Board of Orange County
Case Number:
6:04-cv-1811
Filer:
Document Number: 123

Docket Text:
JUDGMENT in favor of School Board of Orange County against George V. Smith
(Signed by Deputy Clerk) (JET)

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

GEORGE V. SMITH
Plaintiff

-vs- Case No. 6:04-cv-1811-Orl-28DAB

ORANGE COUNTY SCHOOL BOARD,
Defendant.

ORDER

Plaintiff, George V. Smith ("Mr. Smith"), brought the instant action against his former employer, the Orange County School Board ("School Board" or "Orange County"), alleging discrimination, retaliation, and denial of procedural due process. Mr. Smith alleges that after he was terminated in 2000 by the School Board, that he was discriminated against by not being rehired on account of his race and his age. Mr. Smith also claims that he suffered retaliation by the School Board because they did not rehire him and because the Board permitted others to believe that he had been terminated for cause. He claims that this retaliation stems from the charge of discrimination he made with the EEOC following his 2000

termination and because he exercised his rights under the First, Thirteenth, and Fourteenth Amendments. Finally, he claims that he was denied due process as a prospective employee in that he was not permitted to challenge or appeal what he claims are civil rights violations.

This case is before the Court on the Motion for Summary Judgment (Doc. 98) filed by Orange County. Mr. Smith has not filed a response to the motion.[1] Having considered the record in this case and pertinent law, the Court concludes that Orange County's motion must be granted.

I. Background

Mr. Williams began his employment with Orange County in August 2000 as a mathematics instructor at West Orange High School. He was terminated on September 15, 2000. While the School Board cited his "overly harsh attitude and extreme disciplinary practices" to the EEOC as the basis for his discharge (Doc. 98 at 2, 9), Mr. Smith denies those allegations.[2] He was terminated after approximately 19 work days (Dep. of PL., Doc. 99, at 28:8-13).

It is undisputed that Mr. Smith was terminated within the probationary period established by his contract and by section 1012.33(1)(b), Florida Statutes, formerly section 231.36, Florida Statutes. (Doc. 98 at 2; Dep. of PL., at 28:11-13.) During the probationary period "the employee may be dismissed without cause or may resign from the contractual position without breach of contract." Fla. Stat. § 1012.33(1)(b) (2006). Following his firing, Mr. Smith filed a complaint with the EEOC, which issued a right to sue letter to him. He filed another EEOC complaint regarding the factual issues of this case in 2004, and he received another right to sue letter. The basis of his 2004 complaint and this case is that the School Board retaliated against him for filing the EEOC complaint and that they have refused to re-hire him since 2000 because of his race (African American) and his age (fifty-three).

II. Discussion

A. Summary Judgment Standards

Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The moving party bears the burden of establishing that no genuine issues of material fact remain. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256(1986).

In ruling on a motion for summary judgment, the Court construes the facts and all reasonable inferences therefrom in the light most favorable to the nonmoving party. Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 150 (2000). However, summary judgment is mandated "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). When

faced with a "properly supported motion for summary judgment, [the nonmoving party] must come forward with specific factual evidence, presenting more than mere allegations." Gargiulo v. G.M. Sales. Inc., 131 F.3d 995, 999 (11th Cir. 1997). However, a "'district court cannot base the entry of summary judgment on the mere fact that the motion was unopposed but, rather, must consider the merits of the motion.'" Trs. of the Cent. Pension Fund v. Wolf Crane Serv., Inc., 374 F.3d 1035,1039 (11th Cir. 2004) (quoting United States v. One Piece of Prop., 5800 S.W. 4th Ave., Miami. Fla., 363 F.3d 1099, 1101 (11th Cir. 2004)).

B. The Merits of Orange County's Motion

As earlier noted, Mr. Smith has not filed a response to the motion for summary judgment. The Court has, however, as required by Eleventh Circuit case law, considered the motion on its merits. See, e.g., Trs. of the Cent. Pension Fund. 374 F.3d at 1039.

1. Retaliation Under Title VII and § 1981

Mr. Smith claims that the School Board has refused to hire him again as retaliation for his

EEOC filing in 2000. Specifically, Mr. Smith raises three claims of retaliation under Title VI the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e[3] and 42 U.S.C. § 1983 for exercising his rights under the First, Thirteenth, and Fourteenth Amendments (PL's Compl. Counts I, III & IV.)[4]

The Title VII and § 1983 claims are considered first. A § 1981 claim and a Title VII claim are analyzed under the same framework.[5] Wilson v. Farley, No. 06-10417, 2006 WL 2578200, slip op. at *6 (11th Cir., Sept. 8, 2006). Because Plaintiff has no direct evidence of retaliation, his prima facie case must show that "(1) []he participated in an activity protected by Title VII; (2) []he suffered an adverse employment action; and (3) there is a causal connection between the participation in the protected activity and the adverse employment decision." Wilson. 2006 WL 2578200, at * 6 (quoting Gupta v. Florida Bd. of Regents. 212 F.3d 571, 587 (11th Cir. 2000)). Orange County argues that Mr. Smith has not met his prima facie burden because he cannot establish a causal connection between his allegedly protected

activity and the School Board's refusal to rehire him. (Doc. 98 at 5.) Orange County argues that even if Mr. Smith was engaged in protected activity, it will not rehire him because the school's policy and business practice is that it will not consider any instructor who was terminated during the 97-day probationary period for rehire, which, it states, is a legitimate non-discriminatory business practice.

Of the three prongs in the prima facie burden, the second prong is easily established Failure to hire constitutes a qualifying adverse employment action. See Gupta. 212 F.3d at 587 ("An adverse employment action is an ultimate employment decision, such as discharge or failure to hire..."). As for the first prong in the retaliation framework, filing a formal charge of discrimination with the EEOC is often deemed a protected activity, as are less formal means of challenging unlawful employer conduct. Wilson, 2006 WL 2578200, at *6 (citing Shannon v. Bellsouth Telecomms., Inc., 292 F.3d 712, 716 n.2 (11th Cir. 2002)).

To qualify as a protected activity requires that "a plaintiff must show that []he had a good faith, reasonable belief that the employer was engaged in unlawful employment practices." Id. (quoting Weeks v. Harden Mfg. Corp., 291 F.3d 1307,1311 (11th Cir. 2002)). His subjective belief that he was discriminated against is insufficient; the belief must also be reasonable. Id. Mr. Smith's only evidence is his assumption that his 2000 termination - the basis of his EEOC charge - was due to his race. Furthermore, Mr. Smith offers nothing to bolster his denials that his termination resulted from his overly harsh disciplinary practices.[6] Even though the School Board has stated a reason for the 2000 dismissal, the School Board was within its rights to terminate Mr. Smith even without cause during his probationary period. His claim of discrimination seems unreasonable in light of the facts in the record. Thus, Mr. Smith does not appear to have been engaged in statutorily protected conduct when he filed his EEOC claim.

Assuming Mr. Smith had engaged in protected activity, however, he encounters some

trouble establishing the requisite causal connection between his complaint and his not being rehired. The causal nexus requires that the employer know of the protected conduct and that the failure to hire must be "not wholly unrelated" to the protected activity. Gupta, 212 F.3d at 590 (quoting Farley v. Nationwide Mut. Ins., 197 F.3d 1322,1337 (11th Cir. 1999)). Often, temporal proximity is the best indicator of the causal connection, Farley, 197 F.3d at 1337, but "mere temporal proximity between the filing of the charge of discrimination and the action alleged to have been taken in retaliation for that filing will rarely be sufficient in and of itself to create a triable issue." Stone, 281 F.3d at 644 (citing Bass v. Bd. of County Comm'rs, 256 F.3d 1095, 1119 (11th Cir. 2001). The "elapsed time must be very short." Miller v. Potter, No. 05-15897, slip op., 2006 WL 2167898, at *5 (11th Cir. 2006) (characterizing a three-month interval, without further evidence, insufficient to establish an inference of retaliation) (citing Clark County Sch. Dist. v. Breeden, 532 U.S. 268,273 (2001) and

Higdon v. Jackson, 393 f.3d 1211, 1220 (11th Cir. 2004)).

Mr. Smith was terminated in 2000 and soon thereafter, he filed an EEOC complaint. The record is unclear as to whether or when Orange County became aware of that complaint; but it was dismissed and Mr. Smith was issued a right to sue letter in September 2001. He filed another charge, raising the claims asserted here, in 2004. Although he was not rehired in the years 2001-04, subsequent to his initial complaint, Mr. Smith has failed to provide any evidence of a causal connection between the two. Especially given the stated business practice and policy of the School Board, it appears that Mr. Smith cannot carry his prima facie burden.

If Mr. Smith had met his prima facie burden, his claims must still fail because Orange County has proffered a legitimate nondiscriminatory reason for not rehiring Mr. Smith that he has failed to rebut. See Gupta, 212 F.3d at 590 ("Once the plaintiff makes out a prima facie case, the burden shifts to the defendant to rebut the presumption of

retaliation by producing legitimate reasons for the adverse employment action.") (quoting Sullivan v. Nat'l R.R. Passenger Corp., 170 F.3d 1056,1059 (11th Cir. 1999)); see also Wilson, 2006 WL 2578200, at *7. "If the defendant presents unrebutted evidence of a noninvidious reason for the adverse action, he is entitled to summary judgment." Stone v. City of Indianapolis Pub. Utils. Div., 281 F.3d 640, 644 (7th Cir. 2002); see also Combs v. Plantation Patterns, 106 F.3d 1519, 1535 (11th Cir. 1997) (acknowledging that an employer is entitled to judgment as a matter of law when its nondiscriminatory reasons for taking the adverse employment action are not rebutted by the plaintiff).

Superintendent of Schools, Ron Blocker, is responsible for recommending personnel for hire and for dismissal. (Blocker Aff. ¶ 3.) Mr. Blocker has stated that he does not nominate personnel for hire if they have been previously terminated by the School Board within the 97-day probationary period. (Blocker Aff. ¶ 5.; Doc. 98 at 6.) He has sworn that the above policy is his business practice

and that pursuant to that practice, he will not nominate Mr. Smith for reemployment. (id. at ¶¶ 5, 7.) Orange County has satisfied its burden of production under the burden-shifting framework. Thus, assuming that Mr. Smith had raised a presumption of retaliation, Orange County has successfully rebutted it.

The County's presentation of a nondiscriminatory justification shifts the burden back to Mr. Smith to show that the Orange County's proffered reason is merely pretext for its retaliatory motive. See Wilson, 2006 WL 2578200, at *7 n.5. "To show that the employer's reasons were pretextual, the plaintiff must demonstrate such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable fact finder could find them unworthy of credence." Id. (quoting Cooper v. Southern Co., 390 F.3d 695, 725 (11th Cir. 2004)). At this stage of rebuttal, "the plaintiff must persuade the trier of fact that the defendant discriminated against h[im]... The plaintiff cannot simply stand on h[is]

prima facie case..." Walker v. Mortham, 158 F.3d 1177, 1184-85 (11th Cir. 1998) (citations omitted). Orange County is entitled to summary judgment because Mr. Smith has not offered any evidence to create a genuine issue of material fact regarding pretext. See Cooper. 390 F.3d at 725-26 (citing Chapman v. Al Transp., 229 F.3d 1012, 1024 (11th Cir. 2000)). Mr. Smith has relied on nothing more than bare legal assertions, "conclusory allegations," and speculation, none of which will defeat a motion for summary judgment. See Wilson, 2006 WL 2578200, at *7 n.5.

2. Retaliation Under § 1983

Mr. Smith has also made a claim of retaliation under § 1983[7] for exercising his First, Thirteenth and Fourteenth Amendments. (PL's Compl. Count IV.) Section 1983 establishes "a cause of action for persons injured as a result of a 'deprivation of any rights, privileges, or immunities secured by the Constitution and laws' under color of state law." Palmer v. Stewart County Sen. Dist., 178 Fed. Appx. 999,1002 (11th Cir. 2006). A local government will be "liable under § 1983 'when the

execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury..." Mandel v. Doe, 888 F.2d 783, 791 (11th Cir. 1989) (quoting Monell v. Dep't of Soc. Servs., 436 U.S. 658, 694 (1978)). School Boards are considered branches of local government and thus fall within the Monell requirements. Bartes v. Sch. Bd., No. 04-15459, 2005 U.S. App. LEXIS 23386, at *12 n.5 (11th Cir. 2005) (noting that a county school board was an improper defendant because there is no respondeat superior liability under § 1983, and so a plaintiff must prove a policy or custom); Holloman v. Harland, 370 F.3d 1252,1291-94 (11th Cir. 2004) (requiring a school board to have an established policy or custom in order to be liable under § 1983 for violating rights secured by the Constitution); Denno ex rel. Denno v. Sch. Bd., 218 F.3d 1267, 1276 n.9 (11th Cir. 2000). Although an arguable policy or custom plays a role in this case[8] - that persons terminated during their probationary period are not eligible for rehire - that unofficial

policy is unrelated to race and is not a policy of retaliation. Mr. Smith has not shown that this policy is one of retaliation or discrimination, or that it has either effect on prospective applicants.

To state a claim under § 1983 for First Amendment retaliation, Mr. Smith would need to establish that his speech was on a matter of public concern, that the First Amendment interests of the employee outweigh the interests of the employer, that the protected speech played a substantial part in the employment decision, and finally that "the employer must prove that it would have reached the same decision 'even in the absence of the protected [speech].'" Brochu v. City of Riviera Beach, 304 F.3d 1144, 1157 (11th Cir. 2002) (quoting Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle, 429 U.S. 274, 287 (1977)). Orange County argues that Plaintiff's EEOC filing did not touch a matter of public concern because his ultimate goal - to get his job back - was a personal one. (Doc. 98 at 11.) Although there is support for the proposition that filing an EEOC charge of discrimination for personal motives or to complain about personally-

suffered discrimination is not speech on a matter of public concern, see Badia v. City of Miami, 133 F.3d 1443, 1445-46 (11th Cir. 1998); Hazel v. Sch. Bd., 7 F. Supp. 2d 1349,1355 (S.D. Fla. 1998), it seems that some charges of discrimination - even if personally motivated - are political and social concerns of great importance to a community.

Thus, even assuming that Mr. Smith's initial complaint regarding race and age discrimination touched on matters of public concern and was protected, and even assuming that his speech was somehow related to his not being rehired, Orange County has shown that it would have reached the same decision even in the absence of his "protected" speech. Orange County's policy is that it does not rehire persons terminated during the 97-day probationary period. Based on Orange County's stated policy, that it would have reached the same result even if Mr. Smith had not filed his EEOC complaint. The employer has a "legitimate reason, [that] standing alone, would have induced it to make the same decision." Brochu, 304 F.3d at 1157 (quoting Price Waterhouse v. Hopkins, 490 U.S.

228,252 (1989)). Therefore, summary judgment must be granted to Defendant Orange County on this claim.

Plaintiff also claims that he was retaliated against for exercising his rights under the Thirteenth Amendment in seeking an employment contract with the School Board as a qualified black person. (PL's Compl. ¶ 28.) The Thirteenth Amendment "gives Congress the authority to legislate against acts of any state and any private individual which constitute the 'badges and incidents of slavery." Baker v. McDonald's Corp., 686 F. Supp. 1474, 1480 n.12 (S.D. Fla. 1987) (quoting U.S. Const, amend. XIII). There is no cause of action for employment discrimination in the Thirteenth Amendment, although those rights may be asserted under § 1981. Id. The § 1981 claim may then proceed under § 1983 against a state actor. To prevail on this claim, Plaintiff must show, at a minimum that he experienced intentional discrimination on the basis of his race, Id. at 1481. This claim is duplicative of his other claims and

thus, summary judgment in favor of Orange County is appropriate.

Finally, Mr. Smith alleges that he was retaliated against in violation of his due process rights secured by the Fourteenth Amendment. Presumably, Mr. Smith claims the School Board violated his due process rights by denying him a job. Orange County responds by arguing that this general, nonspecific allegation will not support a claim against the Board. (Doc. 98 at 13) (citing Madiwale v. Savaiko, 117 F.3d 1321, 1328 (11th Cir. 1997.) Even assuming that Mr. Smith has stated a claim under the Fourteenth Amendment, he possesses no due process rights, substantially or procedurally, in prospective employment, as fully articulated below. Therefore, Mr. Smith had no due process rights which could have been violated in retaliation for filing his EEOC charge.

3. Race and Age Discrimination

Mr. Smith also claims that the Orange County School Board discriminated against him on account of his race and his age in violation of Title VII and the Age Discrimination in Employment Act

("ADEA"), 29 U.S.C. § 633a, et seq., when he was not rehired after his termination. (PL's Compl. Counts II & III.) Because Mr. Smith has no direct evidence of discrimination, his circumstantial evidence claims are analyzed under the burden-shifting framework of McDonnell Douglas Corp. v. Green. 411 U.S. 792 (1973), and its progeny. See Kelliher v. Veneman, 313 F.3d 1270, 1275 (11th Cir. 2002) (applying McDonnell Douglas to plaintiffs racism and ageism claims); Chapman v. Al Transport, 229 F.3d 1012, 1024-25 (11th Cir. 2000) (same). Under this framework, the plaintiff has the initial burden of establishing a prima facie case of discrimination by a preponderance of the evidence McDonnell Douglas, 411 U.S. at 802. As the Eleventh Circuit has noted, "[d]emonstrating a prima facie case is not onerous; it requires only that the plaintiff establish facts adequate to permit an inference of discrimination." Holifield v. Reno, 115 F.3d 1555,1562 (11th Cir. 1997). If the plaintiff establishes a prima facie case, a presumption of discrimination arises. See Texas Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 254 (1981).

Once the plaintiff has presented a prima facie case and its attendant presumption, the burden "shift[s] to the employer to articulate some legitimate, nondiscriminatory reason" for its actions. McDonnell Douglas, 411 U.S. at 802. The employer's "burden is one of production, not persuasion; it 'can involve no credibility assessment.'" Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133,142 (2000) (quoting St. Mary's Honor Ctr. v. Hicks. 509 U.S. 502, 509 (1993)). If the employer meets its burden of production, it is entitled to summary judgment unless the plaintiff presents evidence creating a genuine issue of material fact regarding whether the employer's articulated reason is a mere pretext for discrimination. See, e.g., Chapman, 229 F.3d at 1024-25 ("If the plaintiff does not proffer sufficient evidence to create a genuine issue of material fact regarding whether each of the defendant employer's articulated reasons is pretextual, the employer is entitled to summary judgment on the plaintiff's claim."); accord Evans v. McClain of Ga., Inc., 131 F.3d 957,964-65 (11th Cir. 1997) ("Under

the established rule of law in this Circuit, a plaintiff can survive a motion for summary judgment or for judgment as a matter of law by presenting evidence sufficient to demonstrate a genuine issue of material fact as to the truth or falsity of the employer's legitimate, nondiscriminatory reasons.").

A plaintiff may make a prima facie showing of discriminatory termination under Title VII by establishing: (1) that he is a member of a protected class; (2) that he was subjected to an adverse employment decision; (3) that the plaintiff was at least minimally qualified to do the job; and (4) that the employer treated a similarly-situated employee outside of the protected class more favorably. Roland v. U.S. Postal Serv., No. 06-12261, slip op., 2006 WL 2881949, at M (11th Cir. Oct. 11,2006); Wilson v. B/E Aerospace. Inc., 376 F.3d 1079, 1087 (11th Cir. 2004); Kelliher v. Veneman, 313 F.3d at 1270, 1275 (11th Cir. 2002). Orange County does not dispute that Mr. Smith satisfies the first three hurdles of his prima facie burden, but the County contends that he has failed to establish that he was

treated differently than similarly-situated others who are not in the protected class.

"To show that employees are similarly situated, the plaintiff must establish that the employees are 'similarly situated in all relevant respects.'" Roland, 2006 WL 2881949, at *4 (quoting Wilson, 376 F.3d at 1091). "If a plaintiff fails to show the existence of a similarly situated employee, summary judgment is appropriate where no other evidence of discrimination is present." Holifield, 115 F.3d at 1562; see also Davis v. Mgmt. Tech., No. 05-00118, slip op., 2006 WL 2356142, at *1-2 (11th Cir. Aug. 16, 2006).

Mr. Smith has failed to identify a similarly-situated comparator as part of his prima facie burden. At his deposition, Mr. Smith was asked if he knew of any person who had been rehired after having been terminated during their probationary period despite the School Board's stated business policy. (Smith Dep. 94:1-11.) Mr. Smith replied "No. I also don't know of any employee who has not been hired, other than myself, who was terminated within the 97-day period." (Id.) Although Mr. Smith

made unsubstantiated allegations regarding discovery abuses on the part of Orange County during his deposition,[9] he has still failed to produce one piece of evidence regarding discrimination beyond his accusations and assumptions. Mr. Smith has failed to make out his prima facie case and thus summary judgment shall be granted. See Holifield, 115 F.3d at 1562.

Even assuming that Mr. Smith had made out his prima facie case for race and/or age discrimination, he has still failed to rebut the legitimate nondiscriminatory reason proffered for not rehiring him. Plaintiff used the magic words during his deposition, stating that the reason given was mere "pretext," (Smith Dep. 113:22-114:5), but without any evidence to show in response, summary judgment for Defendant Orange County is appropriate. There is no evidence of discriminatory intent in this case, and no triable issue remains as to whether Orange County's explanation for its refusing to rehire Mr. Smith is merely pretext for discrimination.

Included under Mr. Smith's counts of race and age discrimination, are allegations of disparate impact in hiring because of race and age. (PL's Am. Compl. ¶¶ 16, 18, 20 & 21.) Mr. Smith has also not borne out a prima facie case of disparate impact discrimination because he has failed to identify a "specific, facially-neutral employment practice" or "a significant statistical disparity in the racial composition of employees benefitting from the practice and those *qualified* to benefit from the practice," much less a causal connection between the two. Lee v. Dep't of Child. & Fam. Servs., 135 Fed. Appx. 202, 204-05 (11th Cir. 2005) (citing EEOC v. Joe's Stone Crab, 220 F.3d 1263, 1268, 1274 (11th Cir. 2000)). Even assuming that the practice of not rehiring an employee who was terminated within the probationary period -which serves as the County's unrebutted legitimate nondiscriminatory reason for refusing to rehire Mr. Smith - was also the specific, facially neutral practice that Mr. Smith claims leads to a disparate impact, the only arguably statistical evidence presented by him is a breakdown, according to race,

of the persons dismissed during the 97-day probationary period. (Doc. 73, Attach. D). It is not entirely clear where this chart came from, or who prepared it, but even assuming its accuracy, it does not assist Mr. Smith in proving his case. Not only is this chart presented irrelevant because it documents dismissals and not rehires, but the chart is also virtually meaningless in the absence of other statistical data that might provide a context or benchmark with which to evaluate the numbers presented. Because Mr. Smith has not established a prima facie case for disparate impact discrimination on the basis of race or age, summary judgment must be granted in favor of the Orange County.

4. Deprivation of Due Process

Finally, Mr. Smith alleges, somewhat repetitively of his § 1983 retaliation claim regarding his Fourteenth Amendment rights that he has been denied due process as a "prospective employee^ to challenge violations of the Civil Rights Acts" and that "Defendants [sic] Equal Opportunity program is designed only to provide

answers to the EEOC justifying its actions in not hiring and makes no effort to assess the veracity of the answers." (Am. Compl. ¶¶ 31 & 32.) Orange County correctly argues that this claim, like the one discussed above for retaliation, must be brought under § 1983. (Doc. 98 at 18-19.) Thus, Mr. Smith must show that he was deprived of "rights, privileges, or immunities secured by the Constitution and laws." 42 U.S.C. § 1983.

"The protections of the Due Process Clause apply to government deprivation of those prerequisites of government employment in which the employee has a constitutionally protected 'property' interest." Gilbert v. Homar, 520 U.S. 924, 928 (1997). There is no protected property or liberty interest in prospective employment. Martinez v. City of New York, 82 Fed. Appx. 253, 254 (2d Cir. 2003); Moore v. Muncie Police & Fire Merit Comm'n, 312 F.3d 322, 326 (7th Cir. 2002). Even though Mr. Smith had been hired in 2000, he was terminated during his probationary period after only nineteen working days on the job. That brief stint as a teacher in the Orange County School

System did not give Mr. Smith an understanding that he would or could be rehired, nor did it give him a property interest in being reemployed by the entity that fired him. According to section 1012.22(1)(a)(4), Florida Statutes, during the period of time that Mr. Smith was terminated, he was an at-will employee, who could be fired without cause.[10] There can be no expectation of reemployment or property interest arising from his initial hiring, when that hiring itself created no property interest.[11] See Altieri v. Penn. State Police, No., 2000 WL 427272. at *10 (E.D. Pa., April 20, 2000) (holding that a statute, requiring new police officers to serve an eighteen-month probationary period, creates no property interest in the position and equating the probationary period to the interview process). To the extent that Mr. Smith claims that there needs to be a procedure to prevent discrimination in hiring practices, that procedure already exists through the administrative and judicial procedures of Title VII, of which Mr. Smith is already acquainted.

5. Punitive Damages

Finally, summary judgment must be granted in favor of Defendant Orange County on Mr. Smith's claim for punitive damages because punitive damages are unavailable against the School Board as a government entity under both § 1983, City of Newport v. Fact Concerts, Inc., 453 U.S. 247 (1981), and Title VII, Brantley v. City of Macon, 390 F. Supp. 2d 1314, 1332 (M.D. Ga. 2005) (quoting Scott v. Estes, 60 F. Supp. 2d 1260, 1274 (M.D. Ala. 1999) and 42 U.S.C. § 1981a(b)(1)).

III. Conclusion

In accordance with the foregoing, it is **ORDERED** and **ADJUDGED** as follows:

1. The Motion for Summary Judgment (Doc. 98) filed by Defendant Orange County School Board is **GRANTED**.

2. All other pending motions are **DENIED as moot**.

3. The Clerk is directed to enter a judgment in favor of Defendant Orange County School Board

in accordance with this Order. Thereafter, the Clerk shall close this file.

DONE and **ORDERED** in Chambers, Orlando, Florida this 2/ day of November, 2006.

S/ JOHN ANTOON II
United States District Judge

Copies furnished to:
Counsel of Record
Unrepresented Party

[1] Although Mr. Smith is proceeding pro se, he has had sporadic legal assistance in this case because he referred to attorney's fees when calculating his costs during his deposition, wherein he stated that he has made payments to at least eight attorneys. (Dep. of PL., Doc. 99, at 179:17-24; see also Doc. 69) (discussing Mr. Smith's erratic use of legal assistance and his attempts to undermine the work of at least one of his attorneys, Mr. Colleton.) In addition, Mr. Smith was notified of his obligations regarding summary judgments in the Case Management Report. (Doc. 17.) Specifically, the report states that any party opposing a summary judgment has 30 days in which to file a legal memorandum in opposition and that summary judgments are taken under advisements 30 days from when it is served. (Id.)

[2] The basis for Mr. Smith's 2000 termination is not an issue in this case. Here, Mr. Smith has claimed and can only claim discrimination and retaliation regarding his failure to be rehired after that initial termination and in his difficulty in finding a teaching job in other school systems.

[3] Mr. Smith's § 1981 claim appears to be based on the injury to his reputation as a result of not being rehired by the School Board. In effect, Mr. Smith argues retaliation by failing to act.

He claims that the Board allowed the public to believe he was terminated for cause, that parents inquired of him as to whether he was terminated for sexual misconduct, that fil ng the school's policy regarding physical, emotional, or sexual abuse of students in response to the EEOC's inquiry led the EEOC to mistakenly conclude that he was terminated for sexual misconduct, and that Orange County has refused to identify the details of his termination when asked by other school systems, which has allowed those "prospective employers to think the worst." (PL's Compl. ¶¶ 22-25.) Most of his claims, therefore, are not necessarily that the Board retaliated against him by defaming him to other potential employers, but that the Board allowed others to believe something that was untrue. This is insufficient to mark a deprivation of any right or interest under § 1983, the mechanism of reaching a state actor under § 1981. See infra n.5; see generally Paul v. Davis, 424 U.S. 693, 701 (1976).

[4] Plaintiff inadvertently numbered two of his Complaint's counts as Count Three. Thus, "Count Three" marks his claims for both race discrimination under Title VII and retaliation under § 1981 related to his reputation as a teacher.

[5] Although § 1981 does not provide a private cause of action against state actors, when not brought in conjunction with §

1983. see Butts v. County of Volusia, 222 F.3d 891, 892 (11th Cir. 2000); see also Palmer v. Stewart County Sch. Dist., 178 Fed. Appx. 999, 1002 (11th Cir. 2006); Asad v. Crosby, 170 Fed. Appx. 668, 673 (11th Cir. 2006), the Court grants Mr. Smith, proceeding pro se, the benefit of the doubt that he has stated a claim under § 1983 to enforce his § 1981 rights. Despite the assumption that he has stated a proper claim, Mr. Smith cannot survive summary judgment under the Title VII framework.

[6] The Court's "sole concern is whether unlawful discriminatory animus motivated the challenged employment decision, not whether the employment decisions were prudent or fair... it does not matter whether the plaintiff is actually innocent of the infraction for which she was fired; the only relevant inquiry is whether the employer believes she is guilty." Miller v. Potter, No. 05-15897, slip op., 2006 WL 2167898, at *3 (11th Cir. 2006) (citing Damon v. Fleming Supermarkets of Fla., Inc., 196F.3d 1354, 1361, 1363 n.3 (11th Cir. 1999)).

[7] As mentioned above, § 1983 is the mechanism for reaching a state actor's conduct. Section 1981, however, "prohibits discrimination based on race in the making and enforcement of contracts and extends to private as well as state actors in

that regard" Anderson v. Convoy, 156 F.3d 167, 170 (2d Cir. 1998) (citing Johnson v. Ry. Express Agency, Inc., 421 U.S. 454, 459 (1975)). Section 1981 was passed pursuant to the Thirteenth Amendment, id. at 172, thus, the Court gleans from the First Amended Complaint that this is the basis of the claim Mr. Smith has made.

[8] If Mr. Smith argues that the School Board itself held the retaliatory motive, an official policy need not be proved, see Tucker v. Talladega City Schs., 171 Fed. Appx. 289, 297-98, 300 (11th Cir. 2006), and it is appropriate to proceed through the traditional retaliatory analysis.

[9] Mr. Smith has also filed and withdrawn numerous motions to compel in response to Defendant Orange County's objections to his propounded discovery. Though Mr. Smith has sought much information regarding his 2000 termination, that termination and its basis is not the subject of this case. (See Order Denying Motions to Compel, Doc. 96, at 6.) Rather, Mr. Smith has alleged that his claim is founded on his failing to be rehired - the 2000 termination is irrelevant to the matter at hand.

[10] To the extent that Mr. Smith seeks to resurrect his lost claims relating to his 2000 termination, the School Board points out that Mr. Smith was provided a procedural

opportunity to protest that termination at the School Board's meeting, but that Mr. Smith did not take advantage of that opportunity.

[11] In his deposition, Mr. Smith claims that the stated policy of not rehiring those terminated during the probationary period is "in violation of several Florida state statutes." (Smith Dep. 92:4-93:25.) He has failed to identify which Florida Statutes he refers to and this Court can find no state statute which would confer a property interest in prospective employment on him.